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☐ 1 : *Biochem Biophys Res Commun* 1990 Jun
15;169(2):346-51

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Structure of human monocyte chemotactic protein gene and its regulation by TPA.

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Monocyte chemotactic protein released by endothelium plays an important role in inflammation, immune reactions and probably in atherogenesis. To elucidate the regulation of synthesis of this protein, the human gene encoding its synthesis was cloned and its nucleotide sequence was determined. This gene is composed of 3 exons of 145, 118 and 478 bp in length with 2 introns of 800 and 385 bp in length. Phorbol ester responsive elements (TRE) were found 129 and 157 bp upstream from the translation initiation site and the phorbol ester treatment of endothelial cell cultures elevated the transcript level of this gene.

PMID: 2357211, UI: 90290466

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Art Unit: 1644

of working examples, the level of skill of the artisan, and the guidance provided in the instant specification and the prior art of record, it would require undue experimentation for one of ordinary skill in the art to make and use the claimed invention.

b. Claim 5 recites the term "capable of producing...". The specification is non-enabling for polynucleotides that do not produce TWIK1 and are only capable of, if further modified such that they can produce TWIK1, because Applicant has not taught how to further modify polynucleotides such that they can produce TWIK1. It has been held that an element is "capable of" performing a function is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. In re Hutchinson, 69 USPQ 138. Applicant is advised to substitute the term "encoding" for "capable of producing".

Claim Rejections - 35 USC § 112 second paragraph

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

a. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2(i) recites the term "stringent hybridization conditions", which is a conditional term and renders the claim indefinite. Furthermore, some nucleic acids which might hybridize